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ALEXANDER L. STEVAS,
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No. 80-2182

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

DARBY DRUG CO., INC., INWOOD LABORATORIES INCORPORATED, MD PHARMACEUTICAL COMPANY, INC., PREMO PHARMACEUTICAL LABORATORIES, INC., RUGBY LABORATORIES, INC., and SHERRY PHARMACEUTICAL CO., INC.,

*Petitioners,*

—against—

IVES LABORATORIES, INC.,

*Respondent.*

## RESPONDENT'S OPPOSITION TO MOTIONS FOR LEAVE TO FILE BRIEFS AMICUS CURIAE

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—against—

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## RESPONDENT'S OPPOSITION TO MOTIONS FOR LEAVE TO FILE BRIEFS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

Two motions have been filed for leave to file briefs amicus curiae in support of the Petition for Writ of Certiorari filed in this case by Inwood Laboratories, Inc. and Premo Pharmaceutical Laboratories, Inc. One was filed by the National Association of Pharmaceutical Manufacturers, Inc. and the other by two organizations, The American Association of Retired Persons and The National Retired Teachers Association. Both Motions were served on the attorneys representing Respondent after Respondent had served and filed its Brief in Opposition to the Petitions for Writ of Certiorari.

Respondent hereby opposes these Motions and asks that the Court deny the organizations leave to file briefs amicus curiae for the following reasons.

The interests of the moving parties are adequately represented in the two Petitions for Certiorari already filed in this case. A review of the motions shows that the arguments that these organizations propose to make are merely cumulative to those made by the Petitioners Inwood and Premo and by the other defendants in the case who are Petitioners in the corresponding Petition identified under Docket No. 81-11. Although the moving parties do not mention, and thus are apparently not attempting to support, this other Petition for Certiorari they made many of the same arguments as appear in that Petition. It should be noted also that the positions espoused by The National Association of Pharmaceutical Manufacturers, Inc. is particularly a repeat of the Inwood and Premo position, undoubtedly because the same law firm prepared the Brief for Petitioner Inwood and the Motion and Brief for said Association.

It is also apparent that a principal argument that the moving parties intend to raise is not appropriately before this Court. They urge that there is an alleged conflict of the Court's decision with the public policy of various states which have passed generic drug substitution laws. The decision, however, was one interpreting a federal statute and state policy can be of no relevance to a Court's interpretation of such a statute.

Finally, the moving parties refer repeatedly to competitive conditions in the drug industry, the history of competition in that industry, and the cost of drugs. The action before this Court, and before the Court of Appeals for the Second Circuit, involves a drug sold in capsules which

simulate the appearance of the Respondent's capsules, and which were illegally substituted for and wrongfully passed off as Respondent's product. The case rests on particular facts and does not address, nor does the record contain evidence of, general competitive conditions in the drug industry, except insofar as it was shown that other generic drugs are marketed in trade dress that does not copy the innovator. The positions which the organizations wish to take before this Court should not be raised in this litigation, but are more appropriately of the type to be addressed to the legislature.

## CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Motions for Leave to File Briefs Amicus Curiae be in all respects denied.

Respectfully submitted,

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*Petitioners,*

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## Certificate of Service

I hereby certify that on this day of , 1981, three copies of the within Respondent's Opposition to Motions for Leave to File Briefs Amicus Curiae were served by mail on each of the following: Bass, Ulman & Lustigman, Attorneys for Petitioner Inwood Laboratories, Inc., 747 Third Avenue, New York, New York 10017; Kirschstein, Kirschstein, Ottinger & Cobrin, Attorneys for Petitioner Premo Pharmaceutical Laboratories, Inc., 666 Fifth Avenue, New York, New York 10103; Salon, Marrow & Dyckman, Attorneys for Petitioners Darby Drug Co., Inc., MD Pharmaceutical Company, Inc., Rugby Laboratories, Inc. and Sherry Pharmaceutical Co., Inc., 41 East 42nd Street, New York, New York 10017; Miller, Singer, Michaelson & Raives, Attorneys for The American Association of Retired Persons and The National Retired Teachers

Association, 555 Madison Avenue, New York, New York 10022; and Milton A. Bass, Attorney for National Association of Pharmaceutical Manufacturers, Inc., 747 Third Avenue, New York, New York 10017. I further certify that all parties required to be served have been served.

/s/ MARIE V. DRISCOLL

MARIE V. DRISCOLL